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Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of) MM Docket No. 93-20
)
Amendment of Section 73.202(b)) RM-8177
Table of Allotments, FM)
Broadcast Stations (Cheyenne, Wyoming))

To: Chief, Allocations Branch

JOINT OPPOSITION TO MOTION TO STRIKE

KMUS, Inc. and Blue Sky Broadcasting, Inc. ("Joint Licensees"), by their attorneys and pursuant to Section 1.45(a) of the Commission's Rules, hereby oppose the motion to strike (styled as an "Opposition to Acceptance of 'Joint Reply Comments'") that was filed in the above-captioned proceeding by Jackalope Broadcasting ("Jackalope").

Contrary to the objections belatedly interposed by Jackalope, the Joint Licensees' Joint Reply Comments in response to the proposed allotment of a new FM radio channel to the already overcrowded Cheyenne, Wyoming radio market were both timely and proper. Specifically, they were filed on the deadline

for reply comments established by the Commission in its Notice of

Joint Licensees to file reply comments as their participation would have been unnecessary under Commission policy if Jackalope or some other party had not expressed an interest in the proposed allocation on or before the comment deadline set in the NPRM.

Jackalope's contention that the Joint Reply Comments was an unauthorized pleading is specious. The Joint Licensees did not file either a counterproposal to or an expression of interest in the proposed new allotment -- both of which are pleadings that must typically be filed on the comment deadline in order to be considered. For this reason, Jackalope's reliance on the Commission's decision in Santa Isabel, Puerto Rico, 3 FCC Rcd 2336 (1988) -- which dealt with the efficacy of a post-comment deadline expression of interest in a proposed allocation -- is inapposite. Similarly unavailing is Jackalope's reliance on the decision in Parker, Arizona, 4 FCC Rcd 540 (Policy and Rules Div. 1988). See Jackalope Opposition at 2. The latter case addressed the appropriateness of extending a reply comment deadline; here, the Joint Licensees' filed their Joint Reply Comments on the April 27, 1993 deadline established in the NPRM. See NPRM, 8 FCC Rcd at 963.

Notwithstanding Jackalope's protestations to the contrary (see Jackalope Opposition at 1-2), it is clear that the Joint Reply Comments responded directly to Jackalope's expression of support for the proposed allotment of a new FM channel to Cheyenne, and to Jackalope's expression of intent in applying for

the channel if allotted. In other words, the Joint Reply Comments, with their call for the Commission to consider the economic impact of a new local aural service before allocating another such service to the small and economically distressed Cheyenne market, are a direct response to Jackalope's expression of support for the service and statement of intention to apply for the channel if allocated. See Jackalope Comments at 1 (filed February 19, 1993).

There is no nefarious intent hidden in the fact that the Joint Licensees waited until the reply comment deadline to file their pleading. If no one had filed an expression of interest in the channel in response to the NPRM, there would have been no need for the Joint Licensees to file reply comments, as Commission policy would have precluded the granting of the allocation without such an expression. See, e.g., East Ridge, Tennessee, 7 FCC Rcd 1722, 1722 n.1 (Alloc. Branch 1992). The Joint Licensees' decision to hold their remarks until after the comment deadline was merely an effort to avoid having to make an unnecessary filing, and thereby to conserve the parties' and Commission resources.

Finally, the Joint Licensees are compelled to respond to Jackalope's contention that the Joint Reply Comments are somehow disruptive of the Commission's processes. See Jackalope Opposition at 2. Although it is true that there would likely have been no "disruption" to the grant of the proposed allocation

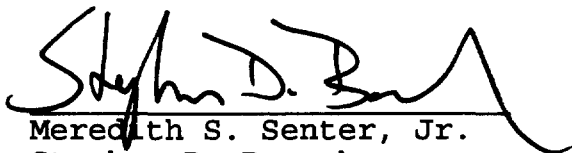
if Joint Licensees had not decided that they must respond to the Commission's proposal, the Joint Reply Comments were proper, and any delay or disruption that ensues is, unfortunately, an inevitable consequence of the administrative process. The Joint Licensees note, however, that the delay could have been reduced had Jackalope not waited nearly one month -- from the April 27, 1993 reply comment deadline until May 24, 1993 -- to move to strike the Joint Reply Comments and to seek to file supplemental comments. It seems that Jackalope's concerns about delay flow only in one direction.

For the foregoing reasons, the Joint Licensees urge the Commission to reject Jackalope's motion to strike as unfounded, and find that the Joint Reply Comments were timely and appropriately filed in this proceeding.

Respectfully submitted,

KMUS, INC.
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CERTIFICATE OF SERVICE

I, Katharine B. Squalls, hereby certify that a true and correct copy of the foregoing "Joint Opposition to Motion to Strike" was sent by first-class postage prepaid mail this 8th day of June 1993 to the following:

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